

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Jacqueline Vanderwarker,

Plaintiff,

v.

GE Capital Retail Bank,

Defendant.

:
: Civil Action No.: 1:14-CV-203 [GTS/CFH]
:
:
:
:
:
:
:
:
:
:

COMPLAINT

For this Complaint, the Plaintiff, Jacqueline Vanderwarker, by undersigned counsel,
states as follows:

JURISDICTION

1. This action arises out of the Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Jacqueline Vanderwarker ("Plaintiff"), is an adult individual residing in Fort Ann, New York, and is a "person" as defined by 47 U.S.C. § 153(39).

4. Defendant GE Capital Retail Bank ("GE"), is an Ohio business entity with an address of 950 Forrer Boulevard, Kettering, Ohio 45420, and is a "person" as defined by 47 U.S.C. § 153(39).

FACTS

5. In or around November 2013, GE began placing daily calls to Plaintiff's cellular telephone number in an attempt to collect the debt.

6. At all times mentioned herein, GE placed calls to Plaintiff's cellular telephone number using an automatic telephone dialing system ("ATDS") and/or by using an automatic or prerecorded voice.

7. When Plaintiff answered a call from GE she heard a recording instructing Plaintiff to remain on the line and wait for a live representative.

8. Sometime in December 2013, Plaintiff answered a call from GE and stayed on the line to be connected to GE's operator.

9. Upon being connected to GE's live operation Plaintiff requested that GE cease placing calls to her cellular phone.

10. None the less, GE continued to place several automated calls daily to the Plaintiff's cellular telephone knowing that it lacked Plaintiff's consent.

11. The telephone number called by GE was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

12. The calls from GE to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.**

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. Without Plaintiff's consent the Defendant contacted the Plaintiff by means of automatic telephone calls or prerecorded messages at a cellular telephone or pager in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

15. Defendant placed calls to Plaintiff's cellular telephone using prerecorded voice knowing that it lacked consent to call her number. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

16. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(1)(A);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);
3. Against the named Defendant, awarding the Plaintiff punitive damages in such amount as is found appropriate; and
4. Granting the Plaintiff such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: February 27, 2014

Respectfully submitted,

By /s/ Sergei Lemberg

Sergei Lemberg (SL 6331)
LEMBERG LAW L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorneys for Plaintiff